

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

CHRISTINE ZACHWIEJA

Case No. 2007-01533-AD

Plaintiff

Deputy Clerk Daniel R. Borchert

v.

MEMORANDUM DECISION

DEPT. OF TRANSPORTATION, DIST.

4

Defendant

FINDINGS OF FACT

{¶1} 1) On October 29, 2006, at approximately 6:00 p.m., plaintiff, Christine Zachwieja, was traveling north on State Route 21 at milepost 8.00 in Summit County, when her automobile struck a large pothole in the traveled portion of the roadway. The impact of striking the pothole caused a puncture in the gas tank of plaintiff's vehicle. Plaintiff stated she was told by a local police officer who responded to the incident that defendant, Department of Transportation ("DOT"), was previously notified about the deteriorated roadway condition on State Route 21.

{¶2} 2) Plaintiff filed this complaint seeking to recover \$738.00, the cost of replacement parts, automotive repair, loss of use expense, and filing fee expense. Plaintiff has asserted she incurred these damages as a proximate cause of negligence on the part of DOT in maintaining the roadway. The filing fee was paid.

{¶3} 3) Defendant acknowledged DOT had notice of the pothole that damage plaintiff's vehicle. Defendant related the Copley Police Department reported a pothole on State Route 21 at milepost 8.00 in Summit County on October 27, 2006. This pothole was repaired by a DOT crew that same day using cold patch material. Apparently the patch material had deteriorated by October 29, 2006. Defendant stated, "ODOT was diligently watching this pothole and made another repair on October 29th," presumably after plaintiff's

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6:00 p.m., property damage event. Defendant contended plaintiff failed to provide sufficient proof to establish DOT negligently maintained the roadway. Defendant stated, “if ODOT personnel had detected any defects they would have been promptly scheduled for repair.”

{¶4} 4) Plaintiff, in her response to defendant’s investigation report, submitted a written statement from Officer William Monzo of the Copley Police Department. Monzo noted he was working on October 29, 2006, and noticed a pothole on, “State Rt. 21 at the Ridgewood Rd. overpass.” Monzo reported the pothole to the Copley Police Department dispatcher at approximately 4:00 p.m., who in turn notified DOT of the roadway defect. Monzo related he was later called to the scene of plaintiff’s property damage event about 6:03 p.m. on October 29, 2006. Furthermore, Monzo pointed out he traveled State Route 21 around 6:45 p.m. on October 29, 2006, and observed the same pothole in the same condition that he reported at 4:00 p.m. on that same day. No patching activity had been initiated according to the observations of Officer Monzo.

CONCLUSIONS OF LAW

{¶5} Defendant has the duty to maintain its highways in a reasonably safe condition for the motoring public. *Knickel v. Ohio Department of Transportation* (1976), 49 Ohio App. 2d 335. However, defendant is not an insurer of the safety of its highways. See *Kniskern v. Township of Somerford* (1996), 112 Ohio App. 3d 189; *Rhodus v. Ohio Dept. of Transp.* (1990), 67 Ohio App. 3d 723.

{¶6} To prove a breach of duty by defendant to maintain the highways plaintiff must establish, by a preponderance of the evidence, that DOT had actual or constructive notice of the precise condition or defect alleged to have caused the accident. *McClellan v. ODOT* (1986), 34 Ohio App. 3d 247. Defendant is only liable for roadway conditions of which it has notice, but fails to reasonably correct. *Bussard v. Dept. of Transp.* (1986), 31 Ohio Misc. 2d 1. Although plaintiff has proven defendant had actual notice of the defect that damaged her car, the actual notice acquired by DOT was of insufficient length to

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invoke liability. However, evidence has been presented to establish that defendant did in a general sense, maintain the highway negligently. *Denis v. Department of Transportation* (1976), 75-0287-AD. The fact defendant patched the particular pothole on State Route 21 two days prior to plaintiff's damage occurrence and the patch rapidly deteriorated constitutes sufficient evidence of negligent maintenance. Such a rapid rate regarding patch deterioration establishes the damage-causing pothole was inadequately and, therefore, negligently repaired. See *Hocevar v. Ohio Dept. of Transp.*, 2004-05791-AD, 2004-Ohio-5418. A pothole patch which deteriorates in less than ten days is prima facie evidence of negligent maintenance. See *Matala v. Department of Transportation*, 2003-01270-AD, 2003-Ohio-2618; *Barnes v. Ohio Dept. of Transp.*, 2004-07140-AD, 2004-Ohio-5148; *Stanziano v. Ohio Dept. of Transp.*, 2005-01935-AD, 2005-Ohio-4218; *Marble v. Ohio Dept. of Transp.*, 2005-02681-AD, 2005-Ohio-3072; *Feeley v. Ohio Dept. of Transp.*, 2005-04284-AD, 2005-Ohio-3535; *Marsh v. Ohio Dept. of Transportation*, 2006-01912-AD, 2006-Ohio-7204. Consequently, defendant is liable to plaintiff for the property damage claimed.

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ENTRY OF ADMINISTRATIVE
DETERMINATION

Defendant

Having considered all the evidence in the claim file and, for the reasons set forth in the memorandum decision filed concurrently herewith, judgment is rendered in favor of plaintiff in the amount of \$738.00, which includes the filing fee. Court costs are assessed against defendant. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Christina Zachwieja
13229 Mt. Eaton Road
Doylestown, Ohio 44230

James Beasley, Director
Department of Transportation
1980 West Broad Street
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RDK/laa
3/29
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